

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

ATHENEX, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-90295 (DRJ)

(Jointly Administered)

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF TELERX
MARKETING, INC. A/K/A C3i TO NOTICE OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES WHICH MAY BE ASSUMED AND ASSIGNED, PURSUANT TO
SECTION 365 OF THE BANKRUPTCY CODE, IN CONNECTION WITH THE SALE
OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS AND THE PROPOSED
CURE AMOUNTS WITH RESPECT THERETO**

Telerox Marketing, Inc. ("Telerox"), by and through its counsel, Archer & Greiner, A Professional Corporation, submits this limited objection ("Objection") to the *Notice of Executory Contracts and Unexpired Leases Which May Be Assumed and Assigned, Pursuant to Section 365 of the Bankruptcy Code, in Connection with the Sale of Substantially All of the Debtors' Assets and the Proposed Cure Amounts with Respect Thereto* [ECF No. 141] (the "Assumption Notice").

1. On May 14, 2023 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

2. On May 14, 2023, the Debtors filed the *Debtors' Emergency Motion for (I) Entry of an Order Approving (A) Bid Procedures; (B) the Form and Manner of Notice; (C) the Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases; and (II) Entry of an Order Approving (A) the Sale of Substantially All of the Debtors' Assets Free and*

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://dm.epiq11.com/athenex>. The location of Athenex, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 1001 Main Street, Suite 600, Buffalo, NY 14203.

Clear of All Liens, Claims, Encumbrances and Interests; and (B) the Assumption and Assignment of Certain Contracts and Unexpired Leases [ECF No. 17] (the “Bid Procedures and Sale Motion”).

3. Pursuant to the Bid Procedures and Sale Motion, the Debtors sought (a) entry of an order (the “Bid Procedures Order”) (i) approving the form and notice of assumption and, if necessary, assignment, of executory contracts and expired leases and (ii) establishing procedures for determining cure amounts in connection with the assumption and, if necessary, assignment of executory contracts, and (b) entry of an order authorizing the assumption and assignment of certain executory contracts and unexpired leases.

4. On May 22, 2023, the Court entered the Bid Procedures Order [ECF No. 113], which, among other things, established procedures related to cure amounts in connection with the assumption and, if necessary, assignment of executory contracts.

5. Debtor, Athenex, Inc. and Telerx are parties to a certain Master Services Agreement dated May 25, 2016 (the “MSA”) and the related Statement of Work – SOW 2023-1 – Safety Hosting for Clinical Trials and Post Marketing dated January 6, 2023 (the “SOW”). Pursuant to the MSA and SOW, Telerx provides drug safety and pharmacovigilance services, acting as a secure repository for the Debtors safety and patient data.

6. On May 26, 2023, the Debtors filed the Assumption Notice, listing the MSA (it is assumed that the Debtors reference to the MSA was intended to include the related SOW) as an executory contract that may be assumed and assigned in connection with the sale of the Debtors’ assets.

7. The Assumption Notice proposed a cure amount of \$27,369.00 (the “Proposed Cure Amount”) in connection with the potential assumption and assignment of the MSA.

8. The Proposed Cure Amount is incorrect. The correct cure amount is \$88,986.00 for services provided through April 2023, as evidenced by the following outstanding invoices:

0435012968	\$16,623.00
0435012969	\$7,340.00
0435013533	\$6,498.00
0435013534	\$5,349.00
0435013914	\$7,340.00
0435013915	\$31,998.00
0435014473	\$7,340.00
0435014474	<u>\$6,498.00</u>
TOTAL	\$88,986.00

9. Additional sums will also be due for May through the date of assumption of the MSA.

Reservation of Rights

10. Telerx reserves the right to amend the cure amount to include additional amounts that may be or become due and to otherwise supplement this Objection, and further reserves any other rights that it may have under applicable law.

WHEREFORE, Telerx respectfully requests that the Court require the amount of cure payments be increased as set forth herein, and grant such other and further relief as is just and equitable.

Dated: June 7, 2023

ARCHER & GREINER, P.C.

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CERTIFICATE OF SERVICE

The undersigned certifies that on June 7, 2023, a true and correct copy of the foregoing document was served on all parties receiving notice via the Court's CM/ECF system and the Objection Notice Parties listed as follows: (a) counsel to the Debtors, Pachulski Stang Ziehl & Jones LLP, 440 Louisiana Ave., Suite 900, Houston, Texas, 77002, Attn: Michael D. Warner (mwarner@pszjlaw.com) and 10100 Santa Monica Blvd., Suite 1300, Los Angeles, California 90067, Attn: Richard M. Pachulski (rpachulski@pszjlaw.com), Debra I. Grassgreen (dgrassgreen@pszjlaw.com), and Shirley S. Cho (scho@pszjlaw.com); (ii) counsel to the Agent, Sullivan & Cromwell LLP, Attn: Ari B. Blaut (blauta@sullcrom.com), Daniel R. Loeser (loeserd@sullcrom.com), Benjamin S. Beller (bellerb@sullcrom.com), Mark E. Dendinger (mark.dendinger@bracewell.com), Jonathan Lozano (jonathan.lozano@bracewell.com); (iii) counsel to the Prevailing Purchaser, if one has been determined;⁴ (iv) proposed counsel to the Committee, (a) McKool Smith PC, 600 Travis Street, Suite 7000, Houston, TX 77002, Attn: John J. Sparacino (jsparacino@mckoolsmith.com) and S. Margie Venus (mvenus@mckoolsmith.com); and (b) Porzio, Bromberg & Newman, P.C., 100 Southgate Parkway, P.O. Box 1997, Morristown, NJ 07962-1997, Attn: Warren J. Martin, Jr. (WJMartin@pbnlaw.com), Robert M. Schechter (RMSchechter@pbnlaw.com) and Rachel A. Parisi (RAParisi@pbnlaw.com); (v) counsel to the Stalking Horse Bidder(s), if any; and (vi) the United States Trustee at the Office of the United States Trustee, 515 Rusk St, #3516, Houston, Texas, 77002, (Attn: Jana Smith Whitworth (Jana.Whitworth@usdoj.gov) and Ha Nguyen (Ha.Nguyen@usdoj.gov)).

/s/ Brian M. Gargano
Brian M. Gargano